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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CASE NO.: 2:16-cr-00046-GMN-PAL

THE UNITED STATES OF AMERICA,

Plaintiff,

Vs.

DEFENDANT CLIVEN D. BUNDY'S
MOTION IN LIMINE

CLIVEN D. BUNDY,

Defendant.

COMES NOW, BRET O. WHIPPLE, ESQ., counsel for CLIVEN D. BUNDY, ESQ.,
and hereby enters his following motion in limine to preclude alleged proof of elements of
crimes against Defendant Bundy attempted to be established through any pleas of guilty by
other defendants in the present case.

DATED THIS 2nd of October, 2017.

JUSTICE LAW CENTER
/s/ Bret O. Whipple, Esq.
Bret O. Whipple, Esq.
Bar No 6168

Tel (702) 731-0000 Fax (702) 974-4008

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant respectfully requests an order that codefendant Blaine Cooper or any others who have taken (or may take) plea deals in this case, but whom have not been sentenced, be prohibited from testifying in upcoming trials, and the United States be prohibited from attempting to prove any element of any crime against Cliven Bundy through evidence that another co-defendant has plead guilty to any act for which Cliven Bundy is accused of conspiring with or aiding and abetting said defendant to commit. This will prevent the United States from holding such codefendants' sentence over their heads to gain an unjust advantage and protect the due process of Defendant Bundy.

Defendant notes that codefendant Blaine Cooper has now obtained a FOURTH (4th) continuance of his sentencing date in this matter, having pled guilty more than a year ago. There can scarcely be any valid or just basis for such a delay in Cooper's sentencing—other than to leverage and pressure Cooper's to give the testimony unduly favorable to the Government against Cliven Bundy.

It is well known and recognized that such an unusual delay in sentencing is a presage of cooperation, such that Cooper understands his sentence will depend on his testimony. In *Welsh v United States* (1965, CA6 Ohio) 348 F2d 885 6th Cir. 1965) (deferment of sentencing after guilty plea due to expectation that defendant would testify for the prosecution at subsequent trial).

Lengthy presentencing delays after a guilty plea are a well-known tactic designed to pressure defendants to turn on others. *State v. Schrom*, 105 Idaho 769, 773 (1983) (saying the trial judge held a “six-year term [of imprisonment] poised over [convicted defendant’s] head like the very sword of Damacles” to coerce defendant into naming additional suspects); *State*

1 v. Talmage, 658 P.2d 920, 930 (Idaho 1983) (district judge confined defendant, instead of
2 retrying him, as coercion to induce the defendant to answer the prosecutor's questions).

3 **ANY REFERENCE TO THE CONVICTIONS OR PLEAS OF CONVICTED OR**
4 **PLEA-TAKING CODEFENDANTS**

5 Similarly, the Court should deny and prohibit any reference at trial (before the jury) of
6 the guilty pleas or convictions of codefendants. The acts or omissions of codefendants must
7 stand on their own as evidence at trial, and must not be colored or shaded by any description of
8 verdict outcomes, or plea bargains. To introduce such evidence would deprive the Defendant
9 of due process, a fair trial, and the confrontation clause, as well as prejudice the Defendant
10 greater than is warranted by the probative value of such evidence.
11

12 DATED THIS 2nd of October, 2017.

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14 **JUSTICE LAW CENTER**
15 /s/ Bret O. Whipple, Esq.
16 Bret O. Whipple, Esq.
17 Bar No 6168
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CERTIFICATION OF SERVICE

I hereby certify that on the 2nd day of October, 2017 a true and correct copy of the foregoing MOTION IN LIMINE was delivered via E-filing to:

DANIEL BOGDEN
United States Attorney

STEVEN MYHRE
First Assistant United States Attorney

NICHOLAS DICKINSON
Assistant United States Attorney

NADIA AHMED
Assistant United States Attorney

ERIN M. CREEGAN
Assistant
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/S/ Tatum Wehr
An Employee of Justice Law Center